SUPREME COURT, U. S.

SEP 11 1967

JOHN F. DAVIS, CLERK

In The

# Supreme Court of the United States

OCTOBER TERM, 1967

---

No. 304

---

NORTHWEST AIRLINES, INC.,

*Petitioner,*

vs.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, DAVID G. RALL and R. E. LEE,

*Respondents.*

---

## REPLY BRIEF FOR THE PETITIONER

---

HENRY HALLADAY
2400 First National Bank Building
Minneapolis, Minnesota 55402
*Attorney for Petitioner*

DORSEY, MARQUART, WINDHORST,
WEST & HALLADAY
*Of Counsel*

1967—Northwest Brief Printing Co., 222 S. Fourth St., Minneapolis 55415 Ph. 339-8370

# INDEX


| | Page |
|---|---|
| Introduction | 1 |
| I. The question of the degree of finality of awards of Airline System Boards of Adjustment is a source of conflict between air carriers and their employees, and will continue to create conflict until it is authoritatively settled by this Court | 2 |
| II. The Court of Appeals has decided the question of the degree of finality of awards of Airline System Boards in conflict with decisions of this Court and in conflict with long-established precedents in the Courts of Appeals | 3 |
| III. Certiorari should be granted to prevent further misconstruction and misapplication of the decision of this Court in Gunther v. San Diego & Ariz. E. Ry., 382 U.S. 257 (1965) | 4 |
| Conclusion | 5 |


## AUTHORITIES CITED

CASES:


| | |
|---|---|
| Gunther v. San Diego & Ariz. E. Ry., 382 U.S. 257 (1965) | 2, 3, 4 |
| International Ass'n of Machinists v. Central Airlines, Inc., 372 U.S. 682 (1963) | 3 |

In The

# Supreme Court of the United States

OCTOBER TERM, 1967

No. 304

NORTHWEST AIRLINES, INC.,

*Petitioner,*

vs.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, DAVID G. RALL and R. E. LEE,

*Respondents.*

## REPLY BRIEF FOR THE PETITIONER

### INTRODUCTION

This case involves the discharge of two pilots. The first pilot (Captain Rall) was discharged for drinking alcoholic beverages within 24 hours of the flight in violation of both a Company rule and a Union rule; the second pilot (Co-Pilot Lee) was discharged for serving while the Captain had an apparent physical deficiency. The discharged employees admit that "there is no dispute as to the fact that the employees committed the conduct complained of . . ." Brief in Opposition, p. 20. Under these circumstances, one wonders at the intemperate tone[1] of the Brief in Opposition.

[1] "Petitioner's claim . . . without the slightest merit," p. 6; "utterly without merit," p. 7; "imagined, but unarticulated," p. 8; "tortuous reasoning," p. 11; "plainly fallacious," p. 11; "tortured refusal," p. 13; "completely without merit," p. 21; "seizes upon the fact," p. 21; "totally without merit," p. 29.

In our Petition we set forth three reasons why certiorari should be granted. Without rearguing points raised in the Petition, we believe it will be helpful to consider each of those reasons as they are attacked by Respondents.

## I. THE QUESTION OF THE DEGREE OF FINALITY OF AWARDS OF AIRLINE SYSTEM BOARDS OF ADJUSTMENT IS A SOURCE OF CONFLICT BETWEEN AIR CARRIERS AND THEIR EMPLOYEES, AND WILL CONTINUE TO CREATE CONFLICT UNTIL IT IS AUTHORITATIVELY SETTLED BY THIS COURT.

Respondents do not deny the importance of the issue, nor the fact that hundreds of thousands of employees, and numerous unions and companies are affected by the issue. They simply assert that the issue was settled by *Gunther v. San Diego & Ariz. E. Ry.*, 382 U.S. 257 (1965).

As anyone who has overcome his initial naiveté in Railway Labor Act matters knows, *Gunther* deals with a *National Railroad* Adjustment Board award made pursuant to §3 of the Act, and §3 was not made applicable to air carriers by §201 or any other section.[2] The awards herein were rendered by *Airline System* Boards of Adjustment, created by contract. Decisions such as *Gunther* construing §3 NRAB awards do not necessarily provide answers to questions concerning contractually created Airline System Boards.

Respondents argue that §204 "unequivocally makes §3 of the Act applicable to §204 boards for the purpose of determining whether their jurisdiction exceeds that of §3 boards." Brief in Opposition, p. 8. Besides being tautological, this claim is beside the point. Only if this Court grants certiorari can it settle the question of how much *less* finality is *permitted* for awards of contractually created airline boards

---

[2]Whether it was "expressly made inapplicable" or expressly not made applicable is an unimportant question of semantics. The important point is that §3 does not apply to air carriers by congressional action.

than is statutorily *required* of §3 railroad board awards.

Respondents also misapprehend our discussion of *International Ass'n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963). Brief in Opposition, p. 11. We agree that the contract involved herein (which is typical of almost all system board agreements) is a "federal contract and is therefore governed and enforceable by federal law, in the federal courts." 372 U.S. at 692. The question we raise is what the federal law has to say about this contract. *Central Airlines* does not settle the question of whether this contract provides for de novo review, prima facie effect, or some other standard. This Court is now asked to do so for the first time.

## II. THE COURT OF APPEALS HAS DECIDED THE QUESTION OF THE DEGREE OF FINALITY OF AWARDS OF AIRLINE SYSTEM BOARDS IN CONFLICT WITH DECISIONS OF THIS COURT AND IN CONFLICT WITH LONG-ESTABLISHED PRECEDENTS IN THE COURTS OF APPEALS.

Respondents make no attempt to square §3 First (p) of the Railway Labor Act with §16(2) of the Interstate Commerce Act (although their argument makes the virtually identical congressional wording yield a vastly different result). Respondents make no attempt to square §3 of the Railway Labor Act with §§ 7-9 of that same Act, (although their argument makes the vastly different congressional wording yield a virtually identical result). Respondents do not contend that any decision prior to *Gunther* was consistent with *Gunther*. Instead they argue that since no decision had been rendered by this Court prior to *Gunther*, this Court was free to decide the case as it wished.

Our claim that petitioner has been deprived of its right to a jury trial is dismissed by respondents with the claim that we are not serious. Brief in Opposition, p. 29. Respondents urge that the right was waived. Yet respondents themselves

demanded a jury trial on the very day they sought summary judgment for the second time. R. 1001. Respondents claim that this action was unknown to the common law. Yet wrongful discharge cases are traditionally heard by courts. Respondents claim that equitable relief is sought, and that "the cases cited by Petitioner holding that a separate issue of damages must be tried by a jury are clearly distinguishable—an action for damages is at law."! Brief in Opposition, p. 29. That last non sequitur provides its own rebuttal.

## III. CERTIORARI SHOULD BE GRANTED TO PREVENT FURTHER MISCONSTRUCTION AND MISAPPLICATION OF THE DECISION OF THIS COURT IN GUNTHER V. SAN DIEGO & ARIZ. E. RY., 382 U.S. 257 (1965).

As we argue in Part I of this Reply, *Gunther* has no relevance to a contractually created Airline System Board of Adjustment. It is misapplied.

We also argue that *Gunther* cannot be read to foreclose de novo review. It is misconstrued.

Respondents argue that their interpretation of *Gunther* is consistent with the earlier dissents of Justice Black. Brief in Opposition, p. 22. So do we. It is on that very basis that we challenge Respondents' interpretation of that case. If a dissenting view in one case is a majority view in another, then the earlier case has been reversed. Yet *Gunther* does not purport to reverse any cases. Therefore, we urge that the interpretation of *Gunther* advanced by respondents is a misinterpretation of that decision. This Court should grant certiorari to prevent further misinterpretation and misapplication in thousands of further instances in the billion dollar airline industry.

## CONCLUSION

It is only after most serious study that we urge this Court to grant certiorari. As we see it, only such a grant can settle, for the hundreds of thousands of airline employees and their numerous unions and employees, the question of the applicability of §3 of the Railway Labor Act to Airline System Boards of Adjustment and the conflicting interpretation of the degree of finality provided by the industry-typical language employed in the contract involved herein.

Respectfully submitted,

HENRY HALLADAY
2400 First National Bank Building
Minneapolis, Minnesota 55402
*Attorney for Petitioner*

DORSEY, MARQUART, WINDHORST,
WEST & HALLADAY
*Of Counsel*